

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

LINDA BREJWO,

Plaintiff,

v.

Civil Action No. 2:23-cv-00121

YVONNE KINCAID,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant removed the instant action from the Circuit Court of Wood County on February 14, 2023. Pending is defendant's Request for Court Appointed Counsel (ECF No. 17). As defendant has proceeded pro se, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of Proposed Findings and Recommendations ("PF&R"). Judge Tinsley entered his PF&R (ECF No. 18) on February 7, 2024, to which neither party has filed objections.

Judge Tinsley found that the court does not have subject matter jurisdiction over the instant action and recommends that the court sua sponte remand this action to the Wood County Circuit Court and deny defendant's Request for Court Appointed Counsel as moot. PF&R at 1.

Defendant Kincaid sought to remove proceedings from the Wood County Circuit Court, but has failed to provide the court with a copy of the complaint or any other pleadings, process, orders, or papers that were served on her in the course of the Wood County proceedings. PF&R at 2. Defendant argues that the court has federal question jurisdiction as she raises a federal defense and diversity jurisdiction because she is a citizen of the Czech Republic and seeks over seven million dollars in damages. PF&R at 3. The magistrate judge thrice entered Show Cause orders, subsequent to which defendant would ask for additional time. PF&R at 4-7. Despite a nine-month extension of time, defendant has failed to provide any of the documents from the Wood County proceedings or provide any of the other information which the court explicitly requested. PF&R at 7.

Based on the limited information provided to the court, Judge Tinsley found there was no federal question jurisdiction, in part because the federal issue was raised as a defense rather than in the complaint, and no diversity jurisdiction, as defendant failed to sufficiently inform the court of the parties' domicile or the amount in controversy. PF&R at 9-13. Additionally, Judge Tinsley found that remand is proper because the defendant failed to comply with the statutory

removal requirements and failed to comply with the court's directives (namely, the Show Cause orders). PF&R at 13.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been made. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (emphasis added). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate judge's findings that were not objected to below, as [28 U.S.C.] § 636(b) doesn't require de novo review absent objection"); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).


Objections in this case having been due on or before February 26, 2024, and none having been filed, this matter may be duly adjudicated.

Accordingly, it is ORDERED that:

1. The magistrate judge's Proposed Findings and Recommendations be, and hereby is, ADOPTED by the court and incorporated herein;
2. Defendant's Request for Court Appointed Counsel (ECF No. 17) is DENIED AS MOOT; and
3. This civil action be, and hereby is, REMANDED to the Circuit Court of Wood County, West Virginia.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge, and a certified copy to the clerk of court for the Circuit Court of Wood County.

ENTER: March 5, 2024



John T. Copenhaver, Jr.
Senior United States District Judge